

SERVICE DATE – NOVEMBER 30, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. NOR 42137

NORTH AMERICA FREIGHT CAR ASSOCIATION

v.

BNSF RAILWAY COMPANY, CSX TRANSPORTATION, INC., CANADIAN NATIONAL RAILWAY COMPANY, KANSAS CITY SOUTHERN RAILWAY COMPANY, NORFOLK SOUTHERN RAILWAY COMPANY, CANADIAN PACIFIC RAILWAY COMPANY, UNION PACIFIC RAILROAD COMPANY AND ASSOCIATION OF AMERICAN RAILROADS

Digest:<sup>1</sup> In this procedural decision, the Board denies the defendants' petition to place this proceeding on hold until January. The Board also sets a deadline for the defendants to file initial responses to the complaint filed by the North America Freight Car Association.

Decided: November 29, 2012

On October 9, 2012, the North America Freight Car Association (Complainant or NAFCA) filed a complaint against the Association of American Railroads (AAR) and the Class I railroads (collectively, Defendants).<sup>2</sup> The complaint claims that Defendants mandate the use of an unreasonable process through which they have imposed unreasonably costly and/or burdensome repair and maintenance requirements on private railcar owners through the adoption of rules governing railcar service and interchange.<sup>3</sup> Specifically, the complaint challenges the

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> In addition to AAR, NAFCA names the following Class I railroads as defendants: BNSF Railway Company, CSX Transportation, Inc., Canadian National Railway Company, Kansas City Southern Railway Company, Norfolk Southern Railway (NSR), Canadian Pacific Railway Company, and Union Pacific Railroad Company. NAFCA's Compl. 3. The complaint contends that AAR is jointly controlled by the Class I railroads through voting rights related to the carriers' revenues. Id.

<sup>3</sup> Id. at 2.

lawfulness of an AAR Interchange Rule addressing “truck hunting”<sup>4</sup> that was proposed in October 2010 and went into effect on January 1, 2011, and the process by which the AAR proposed and adopted the modified rule.<sup>5</sup>

On October 31, 2012, Defendants filed a petition to hold this proceeding in abeyance.<sup>6</sup> They also request that they not be required to file an answer, or other response, until January 11, 2013.<sup>7</sup> Defendants argue that holding the proceeding in abeyance until January 11, 2013, would allow the development of technical and safety data that could resolve the controversy and aid in settlement of the dispute.<sup>8</sup> They claim that the delay would allow Defendants time to complete the present analysis of the rule and for the parties to meet to attempt to resolve the technical and safety issues raised in the complaint.<sup>9</sup> Defendants also assert deficiencies in the initial service of the complaint.<sup>10</sup> Nonetheless, Defendants request that the Board consider the petition a “general denial of all allegations in the complaint.”<sup>11</sup>

On November 6, 2012, NAFCA filed a letter requesting that the Board order Defendants to file answers immediately, or in the alternative, 20 days after Defendants’ petition was filed. On November 9, 2012, NAFCA filed a reply to Defendants’ petition for abeyance. NAFCA argues that the request is a “delay tactic” and part of a pattern of behavior that led it to file the complaint.<sup>12</sup> NAFCA claims that the data Defendants wish to submit is a “post hoc rationalization” of the 2011 rule change at issue.<sup>13</sup> Lastly, NAFCA notes that holding this case in abeyance would harm it and its members by requiring them to continue to absorb the costs of complying with the rule.<sup>14</sup>

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<sup>4</sup> The complaint describes truck hunting as “the rapid oscillation of a railcar truck . . . at high speeds where the wheel flanges tend to ride up on the head of the rail as the truck ‘hunts’ to find a consistent roll on the rail.” Id. at 6.

<sup>5</sup> Id. at 7, 9, 10, 11.

<sup>6</sup> Defendants’ Pet. 1.

<sup>7</sup> Id. at 5-6.

<sup>8</sup> Id. at 2, 5.

<sup>9</sup> Id. at 5.

<sup>10</sup> Id. at 1.

<sup>11</sup> Id. at n.2.

<sup>12</sup> NAFCA’s Reply 4-5.

<sup>13</sup> Id. at 6-7.

<sup>14</sup> Id. at 6.

On November 14, 2012, NSR filed two letters. In its first letter, NSR requests that NAFCA be required to properly serve NSR with the complaint. In its second letter, NSR states that, after the first letter was mailed, NSR was properly served, and that it will consider itself to have been properly served as of November 12, 2012.

### DISCUSSION AND CONCLUSIONS

Request to Hold in Abeyance. The request to hold the proceeding in abeyance will be denied. Defendants assert that development of additional data could help resolve the dispute between the parties. NAFCA does not share this view, arguing that Defendants are engaging in delay tactics and post hoc rationalization of the subject rules. The Board generally encourages mediation, and continues to do so in this case. However, we recognize that under the circumstances here, where one party has indicated it is uninterested in further discussion, it is unlikely that delaying the proceeding would lead the parties to an amicable resolution of the dispute at issue. As such, we find that Defendants have not provided sufficient justification for holding this proceeding in abeyance. However, we encourage the parties to engage in open communication throughout the proceeding.

Deadline for Answers. It appears from the record that service of the complaint on all defendants was complete as of November 12, 2012. See 49 C.F.R. § 1111.3 (“When the complaint involves more than one defendant, service of the complaint shall be deemed completed on the date on which all defendants have been served.”). Because we are denying Defendants’ petition for abeyance, we are also denying their request to postpone the deadline for filing answers to the complaint. Defendants’ answers should be filed no later than December 10, 2012.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Defendants’ request to hold this proceeding in abeyance is denied.
2. Answers are due by December 10, 2012.
3. This decision is effective on its date of service.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.